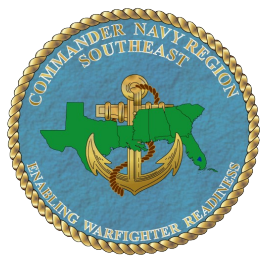


How to Deal with Conduct and Performance Issues



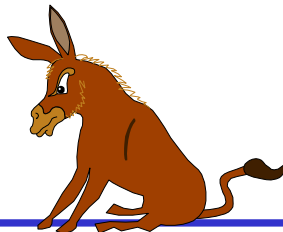
***Commander Navy Region Southeast
Labor & Employee Relations Office***

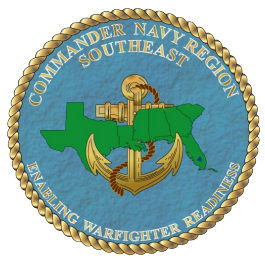
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CONDUCT VERSUS **PERFORMANCE PROBLEMS**

- **Misconduct**: A Failure or Refusal to Comply With a Rule, Regulation or Requirement.
 - **Poor Performance**: A Failure to Perform the Duties of a Position at an Acceptable Level of Quantity, Quality, or Timeliness.
- “WON’T DO” VS. “CAN’T DO”





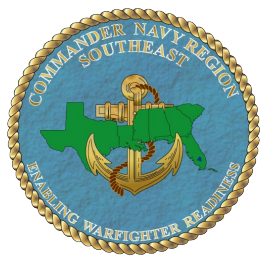
Purpose of Discipline

- **Correct or modify behavior**
 - **Should be progressive in nature**
- **Maintain an efficient, orderly work environment**



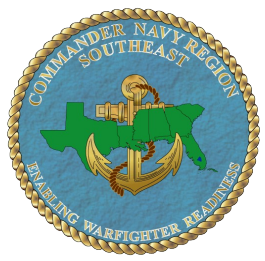
Common Discipline Problems

- **Unauthorized absence**
- **Leaving work without proper authorization**
- **Disrespectful conduct**
- **Careless workmanship**
- **Misuse of government equipment or travel card**
- **Wasting time/inattention to duty**



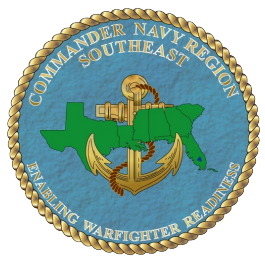
Frequent Causes

- **Employee's personal problems**
- **Poor attitude toward work**
- **Lax or inconsistent enforcement of rules**
- **Desire for personal gain**
- **Lack of motivation**



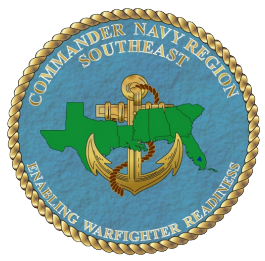
Frequent Causes...

- **Bad examples by co-workers or supervisors**
- **Provocation by supervisor or co-workers**
- **Lack of maturity**
- **Pressure and personal stress**
- **Misunderstanding**



Common Errors

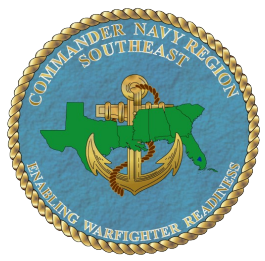
- **Allowing problem to continue too long**
- **Failing to communicate rules and requirements**
- **Enforcing rules inconsistently**
- **Reassigning rather than correcting**
- **Basing disciplinary action on personal anger**
- **Failing to fully investigate before taking action**
- **Applying uneven or arbitrary penalties**
- **Making procedural errors**
- **Failure to take action during probationary period (first 364 days)**



Supervisor's Role in Correcting Misconduct

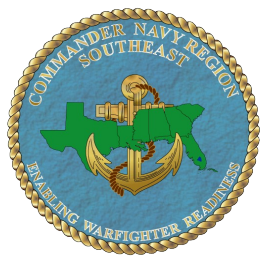
- **Accurately analyze problem**
 - ✓ **Conduct**
 - ✓ **Performance**
- **Refer employees for assistance - if appropriate**
- **Communicate rules, requirements and expectations**
- **Ensure fair and consistent enforcement**
- **Conduct full and fair investigation**
- **Recommend or take corrective action - if necessary**

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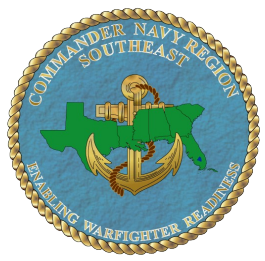
Pre-Action Investigation

- **Problem must be conduct and not performance-based**
- **Results of the investigation should always include employee's version of events.**



Key Questions for Investigations

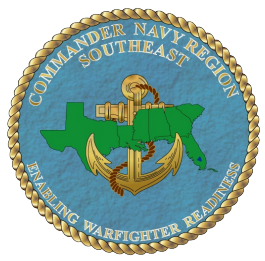
- **Who?**
- **Why?**
- **What?**
- **How?**
- **Where?**



CONSIDERATIONS IN DISCIPLINARY ACTIONS

- **Investigation Results**
 - Innocent until established otherwise
- **Evidence of Wrongdoing**
 - Deliberate or unintentional
- **Applicable Rules or Regulations**
- **Communicating Rules to Employees**
- **Consistent Enforcement**
- **Used to correct behavior not punish the employee**





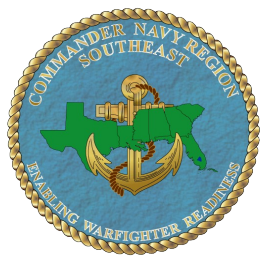
Possible Penalties

Non Disciplinary

- Oral admonishment
- Letter of caution

Disciplinary

- Letter of Reprimand
- Suspension from Duty Without Pay
- Reduction in Pay or Grade
- Removal, Discharge, Termination



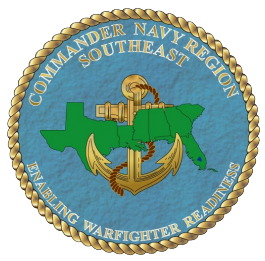
The Douglas Factors

The Merit Systems Protection Board in its landmark decision, Douglas vs. Veterans Administration, 5 MSPR 280, established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These twelve factors are commonly referred to as the “Douglas Factors”.



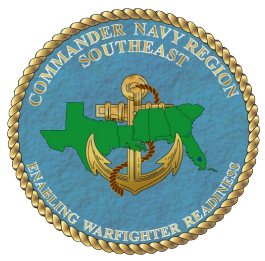
The Douglas Factors...

- (1) The *nature and seriousness of the offense*, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) The employee's *job level and type of employment*, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) The employee's *past disciplinary record*;



The Douglas Factors...

- (4) The employee's *past work record*, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) The effect of the offense upon the employee's *ability to perform at a satisfactory level* and its *effect upon supervisors' confidence in the employee's work ability* to perform assigned duties;
- (6) *Consistency of the penalty* with those imposed upon other employees for the same or similar offenses;

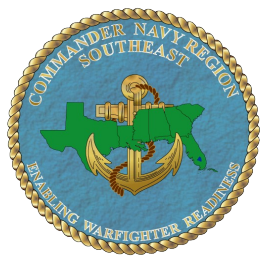


The Douglas Factors...

(7) Consistency of the penalty with any applicable agency table of penalties;

(8) The notoriety of the offense or its impact upon the reputation of the agency;

(9) The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in



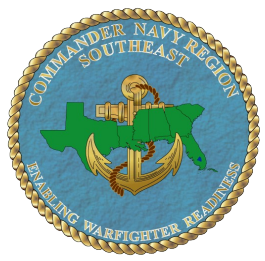
The Douglas Factors...

(10) The *potential for the employee's rehabilitation*;

(11) *Mitigating circumstances* surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter;

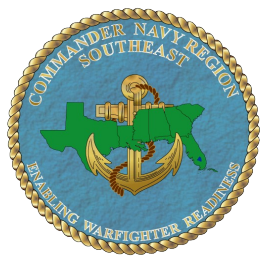
(12) The *adequacy and effectiveness of alternative*

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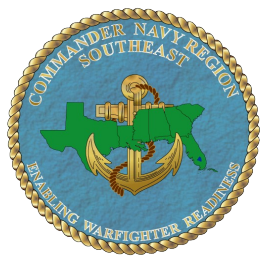
Performance Management Programs

- **NSPS**
- **TWO LEVEL RATING SYSTEM**



IDENTIFYING PERFORMANCE PROBLEMS

Performance problems occur when the quality, quantity or timeliness of an employee's work output fail below an acceptable level



Addressing Performance Problems

- **Early identification of problem (don't wait until end of rating cycle to address)**
 - **Discussion of problem with employee to identify cause**
 - **Development of plan to remedy poor performance (additional training, closer supervision, mentoring by another employee, CEAP referral, etc.)**
-

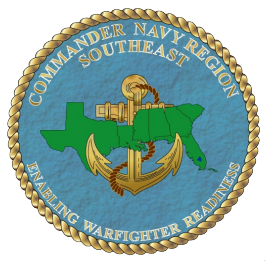


Addressing Unacceptable Performance

- Employee must be notified in writing
- Employee given opportunity to improve
- Employee is provided assistance
- If employee does not improve, employee given proposed notice to reassign, demote, or remove
- Employee given opportunity to reply
- Deciding official makes decision

Remember that you cannot give an unacceptable rating of record without first identifying the performance problem(s) and allowing the employee an opportunity to improve.

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Grievances and Appeals

- **Administrative Grievance**
- **Merit Systems Protection Board Appeal**
- **Equal Employment Opportunity Commission**



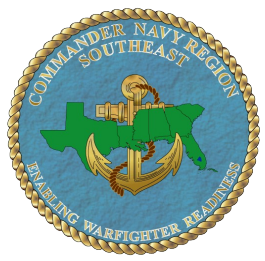
Administrative Grievance

- **Filed by non-bargaining unit employees to grieve:**
 - ✓ **Working conditions**
 - ✓ **Disciplinary actions**
 - ✓ **Work relationships**
 - ✓ **Application of personnel policies**
- **Local decision is final Navy decision (no arbitration or appeal procedures available)**
- **Filed by bargaining unit employees on matters excluded by a negotiated agreement**



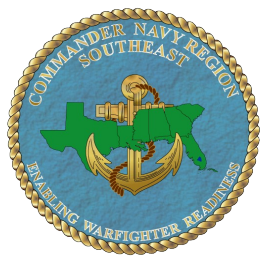
Merit Systems Protection Board (MSPB) APPEAL

- **Administrative forum
employees can appeal adverse
actions**
 - ✓ **Reduction In Force (RIF)**
 - ✓ **Suspensions exceeding 14 days**
 - ✓ **Demotions**
 - ✓ **Removals**



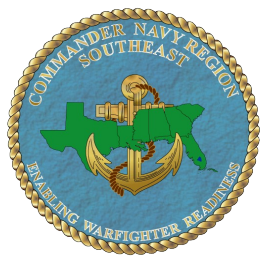
Equal Employment Opportunity Commission (EEOC) APPEAL

- **Employees who believe they have been discriminated against on the basis of race, color, sex, national origin, religion, age or disability may file a complaint with the EEOC within 45 days of the date of the incident that gave rise to the complaint.**



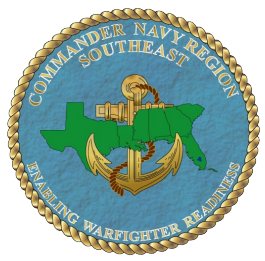
Civilian Employee Assistance Program (CEAP)

- **Corporate Care Works**
- **800-327-9757**



TYPES OF LEAVE

- **ANNUAL**
- **SICK**
- **LEAVE WITHOUT PAY (LWOP)**
- **ABSENT WITHOUT LEAVE (AWOL)**
- **ADMINISTRATIVE**
- **MILITARY**
- **COURT**



QUESTIONS?

Shari Oehrle

**850-452-4767 ext
3113**

DSN 922

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